STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	**CIVIL ACTION NO: 2023-CP-40-00341**
ELIZABETH L. PETER AND GREGORY PETER d/b/a MAIN'S BEST, LLC,	)	
Appellants,	)	**ORDER DENYING APPEAL**
-vs-	)	
CITY OF COLUMBIA POLICE DEPT,	)	
Respondent.	)	

This is an appeal from the decision of the Columbia City Manager Teresa Wilson regarding the revocation of a business license held by the Appellants. The appeal was filed on January 20, 2023 and a return was filed on February 21, 2023. A virtual hearing was held before me on March 22, 2024 by WebEx. Present at the hearing were S, Jahue Moore, Esq. of the law firm of Moore, Bradley and Myers on behalf of the Appellants and W. Mike Hemlepp, Jr., Esq. of the Columbia City Attorney's Office on behalf of the City of Columbia.

Based upon the arguments of counsel, the record in this case and the Constitutional, Statutory, and Procedural law of the United States of America and the State of South Carolina, I hereby dismiss the appeal and affirm the decision of the City.

FACTS

This action centers on a convenience store which was located at 2132 North Main Street in the City of Columbia and was owned by the Plaintiffs, Elizabeth L. Peter and Gregory Peter. The business had been granted a business license by the City of Columbia Business License Office, such license being designated as Business License No: 002924-01-2013.

On April 22, 2022, a "Notice of Intent to Declare Property Public Nuisance" was sent to the Plaintiffs by Chief William "Skip" Holbrook of the Columbia Police Department. The notice was in the form of a letter stating the business was subject to being declared a public nuisance and requesting a meeting to discuss a remediation plan. A meeting was held on April 27, 2022 as a result of this Notice between Inspector Michael Crowley of the Columbia Police Department and the appellants. However, on August 15, 2022, Chief Holbrook served another notice on the Appellants entitled "Declaration of Public Nuisance/Notice of Revocation". In this letter, Chief Holbrook declared the business a nuisance and revoked the business license pursuant to Section 8-40 of the *Code of Ordinance of the City of Columbia*.

On that same day, and pursuant to the procedure set forth in the City of Columbia Ordinance, the appellants filed an appeal with the Office of the City Manager, Teresa Wilson.

A hearing was held on the appeal on September 15, 2022. Present at the hearing were the Appellants, S. Jahue Moore, Esq. representing the appellants, Chief Holbrook for the City and Lamar Fyall, Esq. and Jazmon Kearse, Esq. from the City Attorney's Office. Due to a lack of time to present all of the witnesses, the hearing was adjourned and reconvened on October 14, 2022 for further testimony by both sides. During the period between the first and second days of the hearing, it was determined the business license fees were in arrears by approximately three (3) years.

On December 21, 2022, City Manager Wilson issued an "Order Denying Appeal" finding that the evidence presented of a nuisance was satisfied and the City's decision to declare the business a nuisance was affirmed and the business should cease operation.

An appeal of this order was timely filed with this Court on January 20, 2023.

STANDARD OF REVIEW

Where a municipality has acted after considering all of the facts, a court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of discretion. *Bob Jones Univ, Inc. v. City of Greenville*, 243 S.C. 351, 133 s.e.2d 843 (1963) and *Walter L. Gay d/b/a Sandlapper Tours vs. City of Beaufort*, 364 S.C. 252, 612 S.E.2d 467 (2005).

"A municipal ordinance is a legislative enactment and is presumed to be constitutional." *Town of Scranton v. Willoughby*, 306 S.C. 421, 422, 412 S.E.2d 424, 425 (1992). "[E]very presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution." *City of Rock Hill v. Harris*, 391 S.C. at 154, 705 S.E.2d at 55. "[T]he power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom or expediency of municipal ordinances or regulations." *Rush v. City of Greenville*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965). *McMaster v. Columbia Board of Zoning Appeals*, 395 S.C. 499, 719 S.E.2d 660 (2011).

LAW/ANALYSIS

I. The Ordinances under which the City of Columbia acted were constitutional.

In the April 22, 2022 letter entitled "Notice of Intent to Declare Property Public Nuisance" and the August 15, 2022 letter entitled "Declaration of Public Nuisance/Notice of Revocation", Chief of the Columbia Police Department stated that a public nuisance, in this instance, was defined by Section 8-31(c) (5) of the *Code of Ordinances for the City of Columbia* which states:

(c) *Nuisances offending public decency, peace and order*. The following are hereby declared to be public nuisances affecting public decency, peace and order, whether such violations are of an intermittent, cyclical, continual, reoccurring or constant nature; and when the responsible party generates, enables, or contributes to the occurrence of the unlawful behavior by an absence or failure of property management policy or practice, absence or failure of control over the property, absence or failure of supervision of guests or invitees, absence or failure of security measures.

(5) Any premises or structure located thereupon, whether commercial or residential, where violations against the federal, state or municipal laws occur with disproportionate frequency or intensity that they require an excessive public safety response cost. "Excessive public safety response" means:

a. The reasonable deployment of five or more law enforcement officers to an emergency scene at any one time, or the reoccurring need for public safety or code personnel or emergency vehicles at the location when compared to the frequency or intensity of law or regulation enforcement required at other similarly situated structures;

b. There have been more than two situations of unsafe traffic or crowd control issues at the location which result in the request of emergency assistance or the need for law enforcement assistance from an emergency situation; provided, however, this does not include when traffic control or crowd control is requested in advance of a scheduled event pursuant to a city issued permit or prior discussions with law enforcement.

c. There have been more than six citations, or search warrants executed, or a combination of the two, at the location for any of the following behaviors during any 12-month period:

i. Violation of any state or local alcohol law;
ii. Violation of any federal, state or local narcotics law;
iii. Violation of any state or local gun law;
iv. Assaults; and/or
v. Crimes of violence against another person(s).

Further, in the letters to the Appellants, the City relied on Section 8-40 of the *Code of Ordinances for the City of Columbia* which outlined the process by which a license could be revoked. Section 8-40 is entitled "Institution of Administrative Remedy and Penalty".

Section 8-40 states:

Sec. 8-40. - Institution of administrative remedy and penalty.

(a) *Revocation of licenses or permits for public nuisance*: For any person or entity which holds or owns a license or permit issued by the City of Columbia, a determination of the public nature of a public nuisance must be made by the Chief of Police or must be made by the Director of Business Licenses for any public nuisance under section 8-

31(e). Upon such a finding, in addition to any other relief under these ordinances or applicable law, enforcement of this chapter's provisions may be accomplished upon the revocation of any license or permit issued by the City of Columbia by way of a Notice of Revocation to be served on the License Holder, his/her designee or a person of suitable age and discretion who lives or works at the subject location.

(b) *Operating without a license or permit*: Each day a person operates without a license beginning on the next business day after receiving the notice of revocation, constitutes a separate misdemeanor offense, punishable in accordance with section 1-5. In its discretion, the city may elect to use other applicable Code sections pertaining to remediation, abatement or offenses.

(c) *Review of finding of nuisance*: The responsible person, owner or occupant, or the lien holder of the property, may make a written demand to the city manager for a hearing on the question of whether a public nuisance in fact exists. This review does not stay the revocation of the license of permit, but a hearing will be scheduled with the city manager as soon as possible. The review must be received by the manager before the time specified in the notice. The review may be faxed or emailed to the manager. The written demand shall include an address and a contact number, either phone or facsimile, in order for the person to be informed of the hearing location, date and time. The city manager may amend or modify the notice of revocation, or when appropriate under the facts presented, extend the time for compliance by the owner to such date as the city manager may determine. The decisions of the city manager are final, and shall be delivered in written form within ten days and mailed to the address provided.

(d) *City manager's decision*: Any appeal of the city manager's administrative decision is final and reviewable by the circuit court in the same procedure and manner as state licensing appeals under Section 1-23-380, Code of Laws of South Carolina, as amended from time to time, incorporated herein by express reference.

The two ordinances are cited in the required Notices to the Appellants and are clearly intended to be read together. The primary rule of statutory construction is to ascertain and give effect to the legislature's intent. *Green v. Thornton*, 265 S.C. 436, 219 S.E.2d 827 (1975). In ascertaining the legislature's intent, statutes which are part of the same act must be read together. *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 377 S.E.2d 569 (1989). *Walton v. Canal Ins. Co.*, 485 S.E.2d 107, 326 S.C. 482 (S.C. App. 1998). *S.C. State Ports Auth. v. Jasper Cty.* , 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) ("In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect."); *Duke Energy Corp. v. S.C. Dep't of Revenue* , 415

S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("[T]he [c]ourt should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose."). *Fairfield Waverly, LLC v. Dorchester Cnty. Assessor*, 432 S.C. 287, 852 S.E.2d 739 (S.C. App. 2020).

The appellants raise several issues challenging the Constitutionality of the revocation ordinances. There were two points argued by the Appellants at the hearing: (1) the ordinance did not provide sufficient due process and (2) the revocation process was an unconstitutional delegation of duty by City Council.

Due process is satisfied by the two ordinances read together and therefore I find the Ordinances utilized by the City of Columbia are constitutional.

The Fifth and Fourteenth Amendments of the United States Constitution, as well as the South Carolina Constitution, require that the deprivation of property may not be accomplished by the government without due process of law. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *S.C. Dep't of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997)." "In reviewing substantive due process challenges to municipal ordinances, a court must consider whether the ordinance bears a reasonable relationship to any legitimate interest of government. *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004)." *McMaster v. D.C. Bd. of Zoning Appeals*, 275 Ed. Law Rep. 434, 395 S.C. 499, 719 S.E.2d 660 (S.C. 2011).

The present Ordinances clearly state what constitutes a public nuisance. The governmental interest which is impacted is the excessive necessity for public safety resources at any given location. Both of the letters, the "Intent to Declare" written in April 2022 and the "Declaration of

a Public Nuisance" in August 2022 stated the basis of the declaration was the business "has had at least 197 calls for police service in the preceding years regarding criminal activity." The efficient allocation of public safety resources is a legitimate governmental interest.

The April letter requested a meeting with the Appellants, which was conducted. The August letter stated that despite the meeting "there has been no change in the business operation at that location". Further, the August letter instructed the Appellants they had a right to review the revocation by appealing to the City Manager, which they availed themselves of on that same day. In compliance with the Appellants' request for a review, a two-day long hearing before the City Manager ensued in which the appellants were represented by Counsel, were given an opportunity to question witnesses and bring their own evidence, and argue their position to the City Manager. Once the City Manager decided to uphold the decision in a written Order dated December 21, 2022, the Appellants exercised their right under the Ordinance for a judicial review by instituting the present appeal. There were multiple opportunities for the Appellant to be meaningfully heard during this process.

The Appellants argue the Ordinance provides no protection because the standard relies on "citations" which are mere allegations and the offenders have not been found guilty in a court of law. However, this argument is misplaced. The City was not making a determination of the criminality of persons arrested but rather whether the business and its operations were a cause of the behaviors surrounding it. The action taken by the City is against the license of the business and the nature of the proceeding is administrative. Throughout the hearing, evidence was presented about the business practices of the appellants and the effect those practices had on the surrounding community. See *Amrik Singh & Sbps v. City of Greenville*, 681 S.E.2d 921, 384 S.C. 365 (S.C. App. 2009) and the unpublished opinion on the same case, 2012 WL 10841379 (2012).

The public nature of the nuisance is the "excessive public safety response" as contemplated in the Ordinance.

Additionally, the Appellants contend the Chief of Police, as a law enforcement officer, does not have the authority to declare a public nuisance under South Carolina law and rely on an attorney general's opinion regarding the power of sheriffs to do the same. "Attorney General Opinions, while persuasive, are not binding upon this Court..." *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604, 270 Ed. Law Rep. 357 (S.C. 2011).

However, I find the Attorney General's opinion on this matter is not applicable to the facts of this case. The important distinction here is the Chief of Police is an employee of the City of Columbia, which was the grantor of the business license at issue here. A Sheriff is a separate entity from the County which issues licenses.

The granting, and therefore revocation, of a license is an administrative function. *City of Columbia v. Abbott*, 269 S.C. 504, 238 S.E.2d 177 (1977). Under the Council-Manager form of municipal government, the City Manager is the chief executive officer and head of the administrative branch of the municipal government. Section 5-13-90, *Code of Laws of South Carolina* (1976, as amended). "The city manager shall be the chief executive officer of the city and head of the administrative branch of city government." Section 2-32 of the *Code of Ordinances for the City of Columbia*.

Unlike an elected Sheriff, the Chief of Police is an employee of, and subject to the direct supervision by, the City Manager. "The chief of police, subject to the city manager, shall have administrative supervision over the police department." Section 10-31 of the *Code of Ordinances for the City of Columbia*. Section 10-31 further provides, "He [the Chief of Police] shall perform

such additional duties as may be assigned to him by the city manager." In this instance, the Chief is empowered to act as a hearing officer for this purpose.

The Appellants cite *South Carolina State Highway Department v. Harbin* 226 S.C. 585 86 S.E.2d 466 (1955) for the proposition that an unconstitutional delegation of authority took place in this instance. But the Court in *Harbin* was concerned about the Highway Department revoking or suspending a driver's license "for cause satisfactory", a clearly arbitrary standard. The Court's decision in that case was the legislature allowing the Highway Department to make a decision without clear standards. "By Section 46-172 it was evidently intended to give the Department the right to revoke for causes other than those which had been expressly provided for. And in the grant of this authority, there is no standard except the personal judgment of the administrative officers of the Department." *S.C. State Hwy. Dept. v. Harbin et al*, 226 S.C. 585, 596 (S.C. 1955).

The exact authority which was granted to the Chief, with review by the City Manager, was outlined in the applied definition of "public nuisance" of Section 8-31(c)(5)[1]. It was not an absolute right to declare a nuisance nor was it undefined discretion to find the nuisance in that an objective standard was created by City Council, namely "excessive public safety response" within a 12 month period.

I find this does not constitute an unlawful delegation of legislative authority.

II. The City acted in accordance with the Ordinances and its final decision is lawful.

In the Notices provided to the Appellants in the April 2022 and August 2022 letters, the appellants were told the revocation was based upon the criteria set forth in Section 8-31(c)(5). It

[1] The Appellants argued at the hearing whether the definition of public nuisance found in Section 8-31e would apply, suggesting the Chief of Police only had authority to use that standard. This is inconsistent with the clear language which states the Director of Business Licenses makes those determinations.

further stated the business had more than 197 calls for service at that location. The April Notice explained further:

> "There are numerous documented criminal offenses, including drug possession, drug distribution, larceny, loitering, urinating in public, and alcohol violations. Additionally, police officers have been deployed to other properties with in a 500-foot radius of 2132 Main Street to address criminal activity. There has been an immense amount of police resources devoted to this location. In addition to the aforementioned incidents, the police department has received complaints from surrounding residential neighborhoods and businesses about this location."

Inspector Crowley of the Columbia Police Department spoke to the property owners on April 27, 2022 to address the issues, prior to the decision to revoke the business license. Testimony was provided during the hearing before the City Manager to establish the situation with the subject business did not change, which prompted the August, 2022 decision to declare the business a nuisance. During the hearing, according to the record and the findings of the City Manager outlined in her Order of December 21, 2022:

> "*By and through testimony from both parties and their witnesses, it was determined that Respondent had responded to at least 197 calls for service to the appellants' business. Those services including officer initiated response observed while on patrol, service calls renders by independent citizens, and service calls initiated and rendered by appellants. These calls range from city code violations that are, but not limited to, public urination, loitering, and disorderly conduct. In correlation to these violations, Responded presented testimony that these calls stem from either issues within Main's Best, LLC or were a consequence of the operational structure of Main's Best, LLC. More specifically, testimony from both parties indicated that a vast majority of Appellants sales are alcohol related. The testimony of Appellants' former employee was that "alcohol sales made up 70% of the business' sales." In addition, Appellant, Mrs. Elizabeth Peter, testified that one single serving of beer currently costs approximately $.80; however, prior to the April 27th meeting with CPD the item cost was approximately $.50. Respondent testified that as a result of the price points provided at Main's Best, LLC, it has consequently attributed to the high volume of service calls that have experience at that location. More specifically, Chief Holbrook testified that the calls for service were extremely excessive in comparison to businesses similar to that of Main's Best, LLC. Inspector Crowley, who testified for the Department, also indicated that he currently services as an Inspector of the Entertainment District, and that the calls*

for service associated with Main's Best, LLC far exceed calls from any other businesses within the City."

The City Manager pointed to several specific instances supporting her decision, including a physical assault that occurred inside of the business, an observed drug transaction at the premises, and video footage of the location.

I find that the City Manager's decision to uphold the revocation of the Appellants' business license was not arbitrary, unreasonable, nor an abuse of discretion. Therefore, this Court will not second-guess the actions of the municipality.

ORDER OF THE COURT

NOW, THEREFORE, based upon the foregoing, I hereby find that the Ordinances relied upon by the City of Columbia are constitutional and the City properly and lawfully followed its procedure. Given this Court's review of the matter, it is hereby,

ORDERED, that the City of Columbia's Decision to revoke the Appellants' business license is hereby **AFFIRMED**; and, further, it is hereby,

ORDERED, that the within Appeal is hereby **DISMISSED**.

AND IT IS SO ORDERED.

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Daniel Coble, Circuit Court Judge
COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Signed this ____ th day of _____, 2024
at _____, South Carolina; or
executed electronically as indicated by attached acknowledgement.

Richland Common Pleas

Case Caption: Elizabeth L Peter , plaintiff, et al VS City Of Columbia Police Department

Case Number: 2023CP4000341

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774